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## Judiciary Committee

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### HB 2004

**Title:** An act relating to accrual and limitations of actions or claims arising from construction.

**Brief Description:** Addressing accrual and limitations of actions or claims arising from construction.

**Sponsors:** Representatives Flannigan, Campbell, Ormsby, Hankins, Pettigrew, Darneille, Moeller, O'Brien, Hasegawa, Hudgins and Simpson.

#### Brief Summary of Bill

- Extends the construction statute of repose from six to 15 years, and also applies the discovery rule, in specified cases of alleged defects in residential construction; and
- Applies these changes to cases in which there has been an intentional breach or a knowing concealment of a breach that causes substantial damage to the structural integrity of the property.

**Hearing Date:** 2/22/05

**Staff:** Bill Perry (786-7123).

#### Background:

A statute relating to claims of any kind against builders, or other construction-related professionals, sets out special rules regarding the time during which a suit may be filed. This statute covers claims arising from activities with respect to improvements to real property, including surveying, planning, designing, engineering, constructing, altering, or repairing. In this context, "builder" includes persons engaged in any of these construction-related activities.

Any claim arising out of these activities must "accrue" within six years of the later of substantial completion of construction or the termination of the construction-related service. This six-year period is known as a statute of "repose." Accrual of a cause of action occurs when the plaintiff has the legal right and sufficient facts to bring suit. If a cause of action accrues within the six-year period of repose, then the applicable statute of limitations begins to run from the point of accrual. (The statute of limitations on a written contract, for instance, is six years.) If the cause of action does not accrue within the six-year period of repose, the suit is barred.

Courts have applied the "discovery rule" to the statute of repose. This rule means that the cause of action accrues when the plaintiff knows or reasonably should have known of the defect. In

2003, the Legislature statutorily abrogated the discovery rule in construction contract cases. Without the discovery rule, a plaintiff's cause of action generally accrues when sufficient facts exist for a lawsuit to be brought, whether or not the plaintiff knows or reasonably could know of the facts. The statutory elimination of the discovery rule means that in most cases the plaintiff's cause of action under a construction contract will accrue upon substantial completion of the project, and the six-year statute of limitation and the six-year statute of repose will run concurrently.

**Summary of Bill:**

In specified cases, the construction statute of repose is extended from six years to 15 years, and the discovery rule will apply.

The cases to which these changes apply are residential construction cases where there has been an intentional breach, or a knowing concealment of a breach, that results in substantial damage to the structural integrity of the property.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.